IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7278 of 1999

With

SPECIAL CIVIL APPLICATION No 3876 of 2000

To

SPECIAL CIVIL APPLICATION No 3926 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT S.T.DRIVERS CONDUCTORSTRAFFIC STAFF ASSOCIATION

Versus

DIVISIONAL CONTROLLER GS SHAH

Appearance:

MR RV DESAI for Petitioner

MR HARDIK C RAWAL for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/04/2000

COMMON ORAL JUDGEMENT

Learned Advocate Mr.R.V.Desai appeared on behalf of petitioners. Mr.H.C.Raval learned advocate appeared on behalf of respondent Corporation. In the present petition, the petitioners are challenging the inaction on the part of the respondent of illegal deduction of house rent allowance economic rent and recovery of the electricity charges clearly in contravention of the settled policy of Corporation. The drivers and conductors of Gandhinagar Depot were offered allotment of quarters on conditions that, the workers are required to pay economic rent which was fixed at Rs.400/-. It is submitted by the petitioners that this was the understanding arrived at between the Corporation and the Union of the petitioners. However, the Corporation has in addition to the economic rent that has been claimed by the Corporation, in view of the understanding further deducted the house rent allowance of Rs.700/- per month approximately from all the petitioners who were offered the accommodation by the Corporation. The question relating to deducting H.R.A. is challenged by the petitioners in Special Civil Application No.6686 of 1999. The said Special Civil Application is pending before this Court. It is further pointed out by the petitioners that the offer was made by Divisional Controller, Ahmedabad for the quarters at Gandhinagar. The petitioners after receiving the said offer refused in writing the offer of allotment of accommodation and request was made by the petitioners that in view of the economic burden they are not in a position to run the family and therefore, they are not willing to accept the offer of the housing accommodation provided by the Corporation. It is also pointed out by the petitioners that inspite of the facts in writing the offer of allotment of quarters has been refused by the petitioners. Even though, the respondent No.1 has deducted the economic rent and not paid the H.R.A. and also recovered the electricity charges from the salary of the petitioners, though the petitioners never accepted the offer and obtained possession of the respective quarters. Therefore, present petitions are filed challenging the deduction of economic rent and electricity charges from the wages of the petitioners alongwith the petition Annexure A has been produced with the detail of each petitioners mentioning their designation, badge No., amount of economic rent, electricity charges and total deduction from the wages of each petitioners by the Corporation. After verifying

Annexure A according to the petitioners, the Corporation has deducted economic rent of the said quarters which was offered to the petitioners and also electricity charges and total deduction comes around Rs.600/- to 900/- and in one case it comes to Rs.1600/- in case of Shri N.D.Jani, Helper mechanic. Against that the Union of the petitioners has wrote a letter dated 13th September, 1999 to the Divisional Controller, S.T., Ahmedabad and pointed out that none of the petitioners have accepted the offer for allotment of quarters and not obtained actual possession of the said quarters. Inspite of that fact, the Corporation has illegally without informing the petitioners deducted the economic rent for two months alongwith electrical charges which is illegal, unauthorized and contrary to the conditions of allotment letter. According to the petitioners, the Corporation has not given any reply to the letter dated 13th September, 1999 of the Union. The petitioners has produced on record one copy of allotment letter of quarters in favour of one of the petitioner Shri C.V.Parmar, conductor Badge No. 4200 by offer letter dated 29th May, 1999. In the said allotment letter there are terms and conditions from 1 to 31 at Annexure C to the petition. Annexure D produced by the petitioners letter dated 3rd June, 1999 by Shri C.V. Parmar wherein, the offer of allotment has been refused by the petitioner Shri C.V.Parmar. Therefore, Learned Advocate Mr. Desai who appeared on behalf of the petitioners has pointed out that respondent Corporation has offered the quarters to the petitioners by allotment letter dated 29th May, 1999 and according to the terms and conditions of the said allotment item No.2 which has been pointed out by Mr. Desai that, possession of quarters is required to be obtained by the petitioners from the date of allotment or within 15 days from the date on which the quarters found to be vacant. Rent of the said quarters are required to be paid by the employee from the date of these allotment order or from the date on which the possession has been obtained. Out of two whichever is later from that day the rent is required to be started and accordingly the liability of employee for paying rent will be started. It is further mentioned in the said terms that if any employee is not willing to accept the possession of quarters then in such circumstances the employee concerned has to inform in writing for such intention within 15 days from the date of receiving the allotment order. If, these conditions are strictly satisfied and observed or complied by the concerned employee then employee is not liable to pay any rent for such quarters. Even in case of reasonable cause there is a delay in occupying the quarters in such event it should have to be

informed to the office in writing and required to obtain permission from the office. Except the above circumstances, if within the stipulated period, the quarters are not occupied by the employees then allotment

letter or order shall have to be cancelled by the Corporation. Mr. Desai has also pointed out other terms of the allotment order item No.17 wherein, it is mentioned that if any employee in pursuance to the allotment order has not occupied the quarters within 15 days or any other reason and if offer of allotment has been refused then, in such circumstances, the name of employee concerned shall have to be cancelled from the waiting list and he shall not be entitled thereafter, for allotment of any quarters within a period of six months or one year or subsequently shall have to apply as a fresh candidate. Mr. Desai has further pointed out that as per the item No. 27 of the allotment order, the liability of paying economic rent will start from the date of having taken actual possession of such quarters by such employee and in such event advance two months economic rent is required to be deducted from the salary of such employee. Mr. Desai has submitted if these all three conditions which referred above are read together then it is very clear that liability of payment of rent and electricity charges will arise after having taken actual possession of quarters by such employee in pursuance to the order of allotment of quarters. The relevant three conditions item No.2, 17 and 27 are in Gujarati, quoted as under, which are very relevant for the determination the issue raised in the present petition:

(Para 2 page 27, para 17 page 30 and para 27 page 32 from Annexure C are written in handwiting)

In view of the above three conditions,Mr. Desai submitted that none of the petitioners have occupied actual possession of quarters in pursuance to the order of allotment and not only that but, each petitioner has refused in writing to the Corporation that they do not require the possession of quarters and said offer of allotment of quarters has been rejected by each of the petitioners within 15 days in writing after receiving the order of allotment of quarters from the Corporation. Therefore, without occupying actual possession of quarter the liability of paying any amount of rent and electricity charges of the said quarters does not arise, in view of the clear conditions incorporated in the allotment order and same are satisfied by each of the petitioners. Even though, the respondent Corporation has illegally and unauthorizedly deducted two months economic rent and electric charges from the wages of petitioners which is totally illegal, arbitrary and contrary to the conditions of allotment order.

The Learned Advocate Mr. H.C.Raval has appeared on behalf of respondent Corporation has produced affidavit-in-reply on record on behalf of the respondents on 6th October, 1999. Mr.Raval submitted that it is indeed correct to say that at the instance of the petitioner and at the continued persuasion of the Corporation to the State authorities, ultimately the drivers and conductors were offered allotment of small flats which were originally belonging to the Government of Gujarat. It is pertinent to note that because of the persuasion of the employees and their representations, the State Government allotted 200 flats to the

Corporation with a condition that the Corporation shall collect rent for the said quarters and deposit the rent with the Government. It is pertinent to note that in pursuance of the said direction of the Government, initially 200 quarters were allotted but since certain employees were belonging to Ahmedabad Depot they were not falling within the city limits of Gandhinagar, and hence their cases were not considered and actual possession of only 142 quarters was taken by the Corporation from the Government. In fact an amount of Rs. 1,28,000/- were deposited by the Corporation with the Government for 160 quarters but possession of only 142 quarters was taken. It is pertinent to note that whether an employee has actually taken possession of the quarter or not the Corporation will have to pay rent to the Government of the quarters which are taken possession of by the Corporation. After taking possession of 142 quarters since all the quarters were on the third floor, only 55 employees took actual possession and are residing in the quarters whereas 13 employees took possession and gave it back. It is pertinent to note that out of 142 quarters, 55 employees are actually occupying quarters, 13 of them took actual possession of the quarters but they gave it back whereas 74 employees gave a letter on receipt of the allocation letter saying that they do not wish to take possession of the quarter. Mr.Raval submitted that the petition is preferred only by 52 employees and the facts such as the date on which they took possession, whether they have taken actual possession, reasons for not accepting the possession, etc., are different and hence this general petition is not maintainable. It is pertinent to note that each of the workmen while applying for quarters has signed a form which consisted of various conditions. On 11.5.1999 74 quarters were handed over and on 12.5.1999 68 quarters were handed over by the Government to the Corporation whereas possession of 74 unoccupied quarters after requisite correspondence between the Government and Corporation was handed over back to the Government during the period ranging from 27.8.1999 to 31.8.1999. It is further pertinent to note that 13 workmen have handed over possession of the quarters to the Government directly as they had taken possession but later on did not wish to keep the possession. He submitted that the approach on the part of the employees is irresponsible because they approached the Government for quarters and when the quarters are allotted they are not accepting the same because the said quarters are situated on the third floor. It is further pertinent to note that the Corporation is thus liable to pay rent of 142 quarters from May 1999 to August 1999 to the Government irrespective of the fact as to whether

they are occupied by the employees or not. It is pertinent to note that the petitioner has categorically submitted that it was because of their representation only that the Government allocated the quarters. They applied for quarters to the Corporation and as per para 7 each of the employees were supposed to issue one month notice but none of them issued such notice and hence they are liable to pay the rent to the Government and the Corporation is entitled to deduct the same from the salary of the concerned employees.

As far as the electricity charges are concerned, when the Corporation gave back the possession of the quarters to the Government, it was insisted upon by the Government that unless and until electricity charges in respect of each and every quarters are fully paid, the Government will not accept the quarter back and in view of this the Corporation is deducting those charges which the Corporation is liable to pay to the Government and thus the Corporation is entitled to take the same/recover the same from the salaries of the concerned workmen.

Mr.Raval further submit that the Corporation is deducting/recovering only those amount which the corporation is bound to pay to the Government i.e., rent from the date on which the government handed over the quarters to the Corporation till the date on which the Corporation handed over the quarters to the State Government and nothing more.

In view of the submissions of Mr. Raval that, because of allotment such quarters and not accepting by the petitioners ultimately the real sufferer is the Corporation who has paid rent to the State of Government for occupying 142 quarters from May-1999 to August-1999. He further submitted that initially at the time of actual possession obtained by the Corporation in respect to 142 quarters, the Corporation has deposited Rs.1,28,000/-with the Government. According to him, the possession of said quarter has been obtained by the Corporation for the benefit of petitioners and therefore, in such a event when petitioners refused to accept the allotment of quarters then in such circumstances, the Corporation being a public body should not be put in loss and therefore, the amount which has been paid by the Corporation to the State Government. Therefore, Corporation has deducted the economic rent and electric charges from the petitioners. Therefore, there is nothing wrong in deducting such amount of the rent from the salary of the petitioners. Even though, the petitioners have not accepted the offer of the allotment.

Mr.Raval at the time of submission has produced on record, a statement in respect to 142 quarters allotted to each employee alongwith the detail of quarter number, sector number, date of allotment order and date of refusing allotment order, deposit and deduction of economic rent. In the said statement Shri C.V.Parmar which is at serial No. 64 in the said statement, the date of allotment order when 29th May, 1999 and date of refusing such allotment is 3rd June, 1999. So, within 15 days Shri Parmar has refused the allotment. Name of each petitioners started from C.V.Parmar at serial No.64 to serial No.113, the name of each petitioners are there and details has been given by the Corporation. In the present case, the two details are necessary, one is date of allotment order and date of refusal by such employee.In almost case of each petitioners from date of allotment order, the refusal by the petitioners is within 15 days. The said statement prepared by Corporation is produced before this Court.

I have heard both the learned advocates and I have also perused the order of allotment and all conditions of the allotment order and I also perused the statement which has been produced by the learned advocate Mr.Raval on behalf of Corporation giving complete details in respect to 142 quarters which has been offered by the Corporation and what happened to offer and deduction of economic rent and electric charges from the salary of each petitioners. The details of each petitioners in the statement from serial No.64 to 113. I have perused the all the details in respect to each petitioners as pointed out in the statement and it is clear from the statement that, after receiving the allotment order from the respondent Corporation within a period of 15 days in writing each petitioners had refused the said offer of allotment and informed to the concerned authority. This is factual details in respect to each petitioners which mentioned in the details statements produced by the Corporation.

Now, in light of the details which are on record if, I consider the condition No.2, 17 and 27 of order of allotment in favour of petitioners then it is very clear from the terms and conditions that liability of economic rent will be started if petitioners actually occupy the quarters from the Corporation. The possession of quarter is required to be occupied by employee. The liability of rent will be started from the date of allotment order or from the date of having actual possession of quarters. Out of two whichever is later from that date, the

employee is liable to pay rent of such quarters. However, it is made clear in the said terms and conditions that if any employee does not want the possession of such quarters then he should have to inform in writing within 15 days from the date of receiving the order of allotment. If the said procedure is properly followed by the employee then he will not liable for payment of rent of such quarters. The item No.17 provides that if within 15 days the actual possession is not occupied then in such event or if allotment quarter not accepted will be cancelled from the waiting list. The item No.27 is a authorization in writing by the employee who has been given order of allotment of quarters who agree by written authorization to deduct the economic rent and two months advance economic rent from the salary of such employee from the date of on which the actual possession of the quarters occupied by such employee. So, liability of paying rent from the wages and Corporation is authorized to deduct the rent from the wages of such employee is depend upon important fact that such deduction from the salary from the date on which the employee concerned actually occupied the possession of quarter not prior to that. Therefore, Corporation have no power to deduct the amount of rent from the salary of the petitioner when petitioners have not occupied and having actual possession received from the Corporation. In view of item No.27, the item No.27 is a authorization of employee in writing in favour of Corporation to deduct the economic rent of such quarters which has been actually occupied and having in possession by such employee otherwise Corporation is not entitled to deduct any amount of rent from the petitioners because except item No.27. There is no separate and independent authorization given by petitioners in favour of Corporation except which specified in item No. 27 of order of allotment. Therefore, Corporation have no power to deduct the rent from the wages of petitioners beyond the terms of authorization as given by each petitioners as per item No.27 of said allotment order. Therefore, after considering the allotment orders and terms and conditions of the said allotment order and reply of the Corporation and statements produced by Corporation in respect to each petitioners, I am of the opinion that Corporation has unauthorisedly and without any legal authorization has deducted the economic rent and electric charges from the salary of petitioners when petitioners in fact have not obtained the actual possession of quarters as per allotment order and within 15 days from the date of receiving the allottment order. Each of the petitioners have refused the offer of allotment in writing and communicated to the concerned authority and

therefore, considering the terms and conditions of allotment order item No. 2, 17 and 27 read together, such deduction of economic rent and electric charges from the salary of each petitioners are illegal, arbitrary, unauthorized and contrary to the terms and conditions of allotment order. Therefore, each petition is required to be allowed by quashing and set aside, such deduction of economic rent and electric charges as specified in respect to each petitioners at Annexure A page 20 of Special Civil Application No.7278 of 1999 and it is directed to the respondent Corporation to pay back said amount which has been deducted by the Corporation from the salary of each petitioners within a period of one month from the date of receiving the certified copy of the said order.

Mr.Raval has submitted that after all in such situation the real sufferer is the public body who has paid the advance amount to the State Government which comes to Rs.1,28,000/-. Mr. Raval is right. Ultimately the Corporation has paid the amount to the State Government in occupying the 142 quarters from the State Government in benefit of employees of Corporation. The Corporation is an employer and it is duty of the Corporation to act in accordance with law in respect to any deduction if it is required to be made from the wages of employee. Therefore, in present case, the action of respondent Corporation in deducting the economic rent and electric charges from the wages of petitioners without obtaining actual possession and when, refusing the offer of allotment is not in accordance with law and same is arbitrary but, however, it is open for the Corporation in such situation to represent the State Government about loss cause to the Corporation and if such representation is made by the Corporation to the State Government then in peculiar fact of this case, the State Government will consider such representation sympathetically.

In view of above observation and clear finding that respondent Corporation has illegally, unauthorized, arbitrary manner and contrary to the terms and conditions of allotment order deducted the economic rent and electric charges from the salary of each petitioners is required to be quashed and set aside and it is directed to the Corporation to pay the deducted amount in respect to economic rent and electric charges from the salary of each petitioners within a period of one month from the date of receiving the certified copy of this order. Each petition is allowed and rule is made absolute in each petition with no order as to costs. Office is directed to sent the writ of said order immediately to the

respondent Corporation.

(H.K.RATHOD,J)

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